

RECORDING REQUESTED BY:

Lennar Mare Island, LLC
690 Walnut Avenue, Suite 100
Vallejo, California 94592

Recorded in Official Records,
Solano County
Doc#: 200600039657
3/31/2006 8:00 AM

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Region 1
8800 Cal Center Drive
Sacramento, California 95826
Attention: Mr. Anthony J. Landis, Chief
Office of Military Facilities

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Building 944

**Investigation Area D1, Former Mare Island Naval Shipyard
Eastern Early Transfer Parcel
Vallejo, California**

This Covenant and Agreement ("Covenant") is made by and between Lennar Mare Island, LLC, a California corporation ("Covenantor"), the current owner of property to be restricted herein, situated on the Former Mare Island Naval Shipyard in Vallejo, County of Solano, State of California, and the California Department of Toxic Substances Control (the "Department"). Pursuant to California Civil Code ("Civil Code") section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in California Health & Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471 and H&SC section 25355.5, that the use of the Property be restricted as set forth in this Covenant. The Parties further intend that the provisions of this Covenant also be for the benefit of, and enforceable by, the United States Environmental Protection Agency ("U.S. EPA") as a third party beneficiary.

ARTICLE I – STATEMENT OF FACTS

1.01 Building 944 is located on the developed eastern side of Mare Island and comprises a portion of the area generally known as the Eastern Early Transfer Parcel of Mare Island (“EETP”), in Vallejo, County of Solano, State of California. The general location of Building 944 is depicted in Exhibits “A1 and “A2”, attached hereto and incorporated herein by this reference. The polychlorinated biphenyl (“PCB”) site addressed in this Covenant is designated Building 944 AL#02 and is located in the generator room on the north end of Building 944, as depicted in Exhibit “A2”. The entire footprint of Building 944 is subject to this Covenant, and is more particularly described and depicted in Exhibits “B” and “C” (the “Property”), attached hereto and incorporated herein by this reference.

1.02 On March 26, 2002 the ownership of the EETP, which included the Property, was transferred from the United States Department of the Navy (“Navy”) to the City of Vallejo (“City”), and then immediately to Covenantor.

1.03 The EETP was previously part of the Navy’s Mare Island Naval Shipyard. In April 2002, the Navy and the Department entered into a Federal Facility Site Remediation Agreement (“FFSRA”). Under the FFSRA for the EETP, the Navy retains its obligations under federal and state laws concerning the remediation of hazardous substances on the Property due to the activities of the Navy.

1.04 The Covenantor, the Department, and the City entered into a Consent Agreement on April 16, 2001 (“Consent Agreement”), whereby the Covenantor is obligated to perform remedial actions, achieve regulatory closure, and comply with operation and maintenance requirements such as the requirements of this Covenant, on the Property. The Consent Agreement is on file with the Department and the Covenantor. The Consent Agreement subdivides the EETP into eight (8) Investigation Areas. The Property is located within one of these Investigation Areas—Investigation Area D1. The *Final Remedial Action Plan for Investigation Area D1* was approved by the Department on May 27, 2004, and provides that a deed restriction be required as part of the site remediation at the Property.

1.05 The Department has the authority pursuant to Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) section 120, and the H&SC chapter 6.5 and 6.8 to regulate PCBs.

1.06 The Toxic Substances Control Act (“TSCA”) Complaint/Consent Agreement and Final Order for the Former Mare Island Naval Shipyard (“CA/FO”) establishes U.S. EPA regulatory closure requirements for PCBs on the EETP. The Covenantor is an “Intervenor” in the CA/FO because under the terms of the Consent Agreement and other EETP transfer documents, the Covenantor has assumed certain responsibilities for, among other things, TSCA compliance and regulatory closure on the EETP.

1.07 Following the cleanup at the Building 944 AL#02 PCB site, the maximum remaining PCB concentration on the concrete floor is 1.7 milligrams per kilogram ("mg/kg"), as depicted in Exhibit "D", attached hereto and incorporated herein by this reference. The 95-percent upper confidence limit of the mean for the remaining PCB concentrations at Building 944 AL#02 is 1.87 mg/kg.

1.08 The maximum remaining residual PCB concentrations in the concrete floor at the Building 944 AL#02 PCB site meet the alternative Substantive Cleanup Requirements for building floors in commercial/industrial areas set forth in Paragraph 8(b)(2) of the CA/FO for bulk PCB remediation wastes (which includes concrete). Pursuant to Paragraph 8(b)(2) of the CA/FO, a no further action determination is appropriate at PCB sites where the 95-percent upper confidence limit of the mean is 5 mg/kg or less and the maximum total PCB concentration in any sample is less than or equal to 10 mg/kg, provided the Property is limited to commercial/industrial use. The Department and U.S. EPA have therefore concluded that the Building 944 AL #02 PCB site does not present an unacceptable risk to human health or the environment provided the following uses of the Property are prohibited: residences, hospitals, schools for persons under the age of 18, or day care centers.

1.09 Pursuant to Paragraph 6(a) of the CA/FO, no further action is needed with respect to PCB contamination at Building 944 AL#02, provided that the applicable requirements established in this Covenant are satisfied.

ARTICLE II – DEFINITIONS

2.01 Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Owner. "Owner" means the Covenantor and shall include the Covenantor's successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

2.03 Occupant. "Occupant" means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04 U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency, and includes its successor agencies, if any.

2.05 Bulk PCB Remediation Waste. "Bulk PCB remediation waste" is defined by U.S. E.P.A. in 40 Code of Federal Regulations ("C.F.R.") 761.61(a)(5)(i), which states: Bulk PCB remediation waste includes, but is not limited to, the following non-liquid PCB remediation waste: soil, sediments, dredged materials, muds, PCB sewage sludge, and industrial sludge."

ARTICLE III – GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, “Restrictions”), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC Section 25355.5 (a)(1)(C), Civil Code section 1471, and California Code of Regulations, title 22, section 67391.1; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department, and U.S. EPA as a third party beneficiary and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding Upon Owners, Occupants and Lessees. Pursuant to H&SC section 25355.5 (a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignee, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department, and U.S. EPA as a third party beneficiary.

3.03 Written Notification of the Presence of Hazardous Substances. Prior to the sale, lease, or sublease of the Property, or any portion thereof, the Owner, Occupant, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases entered into for any portion of the Property on or after the date of recordation of this Covenant.

3.05 Conveyance of Property. The Owner shall provide notice to the Department and U.S. EPA not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06 Costs of Administering the Covenant. The terms of this Covenant run with the land and will continue in perpetuity unless a variance or termination is granted pursuant to Article VI herein. The Department has incurred and will in the future incur costs associated with the administration of this Covenant. Pursuant to the California Code of Regulations, title 22, section 67391.1(h), the Department’s costs associated with the administration of this Covenant will be paid.

ARTICLE IV – ENVIRONMENTAL RESTRICTIONS

4.01 Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as a residential habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 18 years.
- (d) A day care center for children.

4.02 Management of the Property.

(a) No activities at the Property that disturb the floor of the Building 944 AL#02 PCB site depicted in Exhibit D shall be allowed without written notice to the Department and U.S. EPA at least thirty (30) days prior to planned activities and approved by the Department and U.S. EPA prior to implementation.

(b) If the use of Property changes in a manner that will increase the risk of exposure to PCBs, an evaluation of the feasibility of implementing remedial measures that at least reduce such increased exposure risks from PCBs on the Property shall be submitted to and approved by the Department and U.S. EPA prior to changing the use of the Property. In the event that any portion of the Property is to be demolished, additional measures for construction worker protection and disposal of bulk PCB remediation waste will be required pursuant to 40 C.F.R. part 761. Any remediation of PCBs on the Property or management of PCB waste shall be pursuant to applicable state and federal laws.

4.03 Access. The Department and U.S. EPA shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department and/or U.S. EPA to protect public health or safety or the environment.

4.04 Inspection and Reporting. The Owner of the Property shall perform an annual inspection to verify that the use of the Property is in compliance with the provisions of this Covenant. Based on the annual inspection, a report shall be developed and submitted to the Department, U.S. EPA, and the City of Vallejo documenting the findings of the annual inspection. The first report shall be submitted to the Department, U.S. EPA, and the City of Vallejo one year following the date of recordation of this Covenant and shall be submitted to the Department, U.S. EPA, and the City of Vallejo annually thereafter. The report shall describe the monitoring and inspection of the Property for compliance with this Covenant, state the deficiencies and measures taken and necessary to address these deficiencies.

4.05 Notification to the Department. The Owner shall notify the Department and the U.S. EPA within 3 business days of discovery of any activity that violates or is inconsistent with the provisions of this Covenant. The notification shall include any corrective measures taken or planned to address the violation or inconsistency. The Owner shall notify the Department and U.S. EPA within 3 business days of discovery of a previously unknown hazardous substances release to the environment, and in all cases the Owner shall comply with applicable notification requirements under state and federal law. The notification shall include a description of any interim containment or corrective measures taken or planned.

ARTICLE V – ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department and/or U.S. EPA to obtain injunctive relief prohibiting commencement or continuation of any uses or activities restricted by this Covenant. U.S. EPA shall be entitled to enforce the provisions of this Covenant as a third party beneficiary. Violation of this Covenant shall be grounds for the Department and/or U.S. EPA to seek or file enforcement actions as provided by law.

ARTICLE VI – VARIANCE, TERMINATION, AND TERM

6.01 Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No variance may be granted under this paragraph 6.01 without prior notice and opportunity to comment by U.S. EPA. Any approved variance shall be recorded in the Office of the Recorder of Solano County, California, by the person or entity granted the variance.

6.02 Termination. The Owner, or with the Owner's consent, any lessee, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25234 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No termination may be granted under this paragraph 6.02 without prior notice to and opportunity to comment by U.S. EPA. Any termination shall be recorded in the Office of the Recorder of Solano County, California, by the person or entity granted the termination.

6.03 Term. Unless ended or modified in accordance with the paragraphs above, by law, or by the Department in the exercise of its discretion, after providing notice to and opportunity to comment by U.S. EPA, this Covenant shall continue in effect in perpetuity

ARTICLE VII – MISCELLANEOUS

7.01 No Dedication or Taking Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under federal or state law.

7.02 Department References. All references to the Department include successor agencies/departments or any other successor entity.

7.03 Recordation. The Covenantor shall record this Covenant, with Exhibits “A1”, “A2”, “B”, “C” and “D”, in the County of Solano within ten (10) days of the Covenantor’s receipt of a fully executed original.

7.04 Notices. Whenever any person gives or serves any notice (“Notice” as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested as follows:

To Owner:

Ms. Sheila Roebuck
Lennar Mare Island, LLC
690 Walnut Avenue, Suite 100
Vallejo, California 94592

To Department:

Department of Toxic Substances Control
Region 1
8800 Cal Center Drive
Sacramento, California 95826
Attention: Mr. Anthony J. Landis, Chief
Office of Military Facilities

To EPA:

U.S. EPA Region IX
75 Hawthorne Street
San Francisco, California 94105
Attention: PCB Coordinator (CMD-4-2)

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any portion of the Restrictions or any other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.

7.06 Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.07 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.08 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

7.09 Statutory References. All statutory references include successor provisions.

7.10 Counterparts. This Covenant may be executed in counterparts.

IN WITNESS WHEREOF, the Parties execute this Covenant.

COVENANTOR: LENNAR MARE ISLAND, LLC

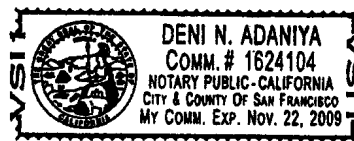
By: [Signature]
Name: _____
Title: VP
Date: 3/21/06

STATE OF CALIFORNIA)
COUNTY OF San Francisco)

On this 21st day of March, in the year 2006, before me
Deni N. Adaniya, personally appeared
Thomas Sheaff, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Signature]



IN WITNESS WHEREOF, the Parties execute this Covenant.

THE STATE OF CALIFORNIA ACTING BY AND
THROUGH THE DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: Anthony J. Landis
Name: ANTHONY J. LANDIS
Title: BRANCH CHIEF
Date: 3/27/06

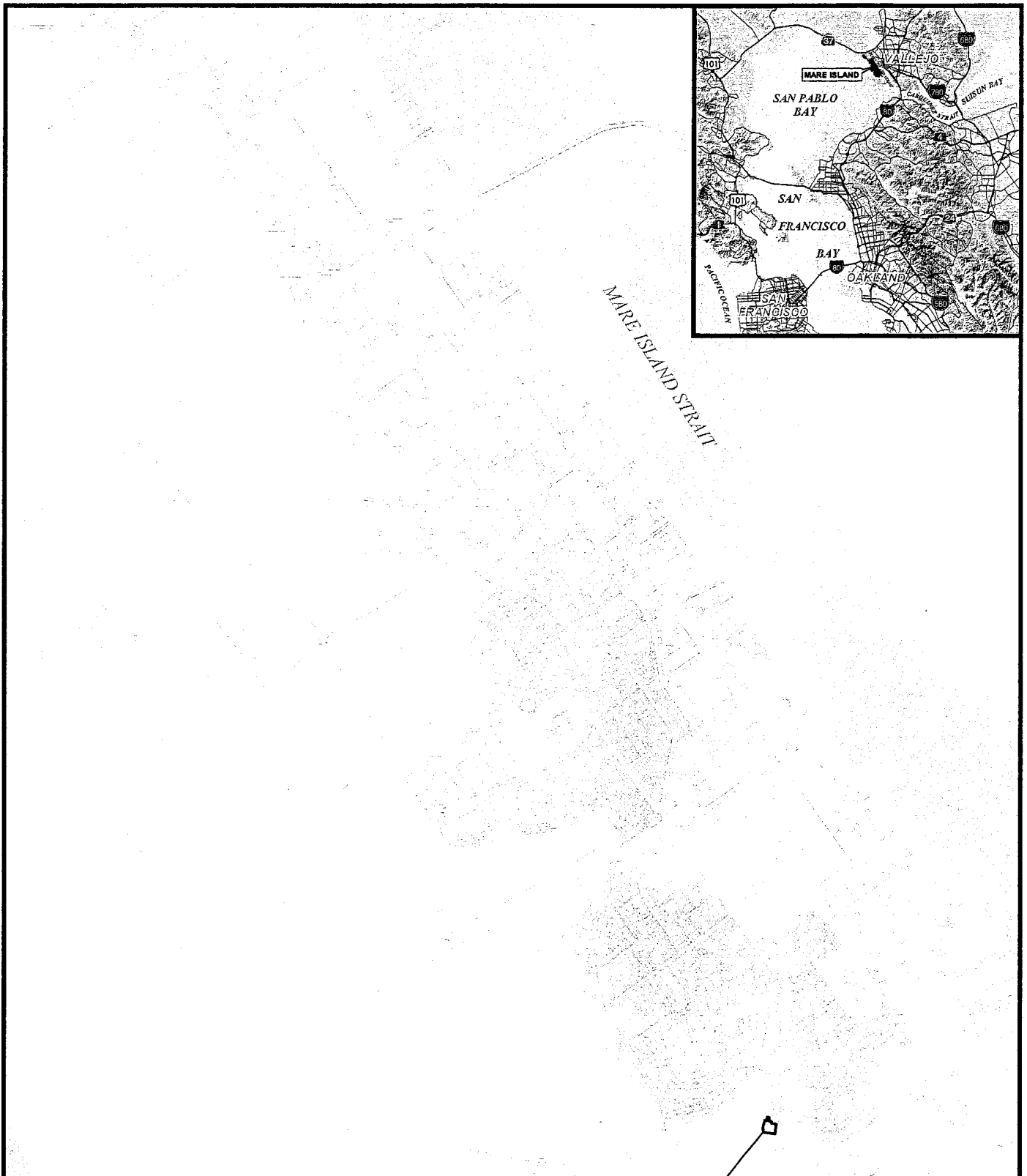
STATE OF CALIFORNIA)
COUNTY OF Sacramento)

On this 27th day of March, in the year 2006, before me
Kathleen C. Duncan, personally appeared
Anthony J. Landis, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~
executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Kathleen C. Duncan



BUILDING 944

LEGEND

EASTERN EARLY TRANSFER PARCEL

INVESTIGATION AREA D1

ROADS

STRUCTURES

WETLANDS

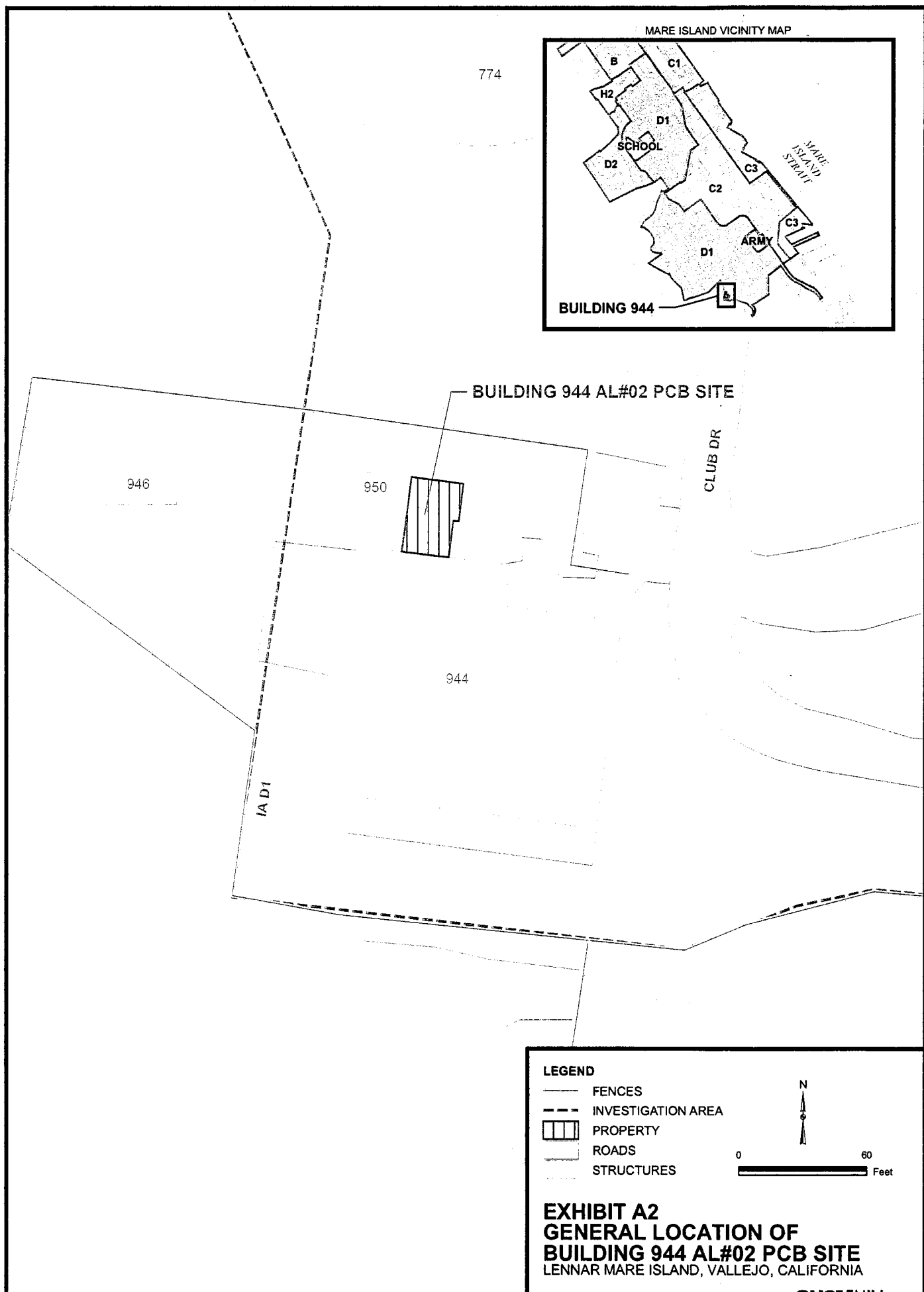
WATER

0 1,400
Feet



EXHIBIT A1
GENERAL LOCATION OF BUILDING 944
LENNAR MARE ISLAND, VALLEJO CALIFORNIA

CH2MHILL



Lennar Mare Island, LLC
A portion of A.P.N. 066-010-001
Building 944, Environmental Restriction Area

Exhibit B
Legal Description

All that real property situate on the lands commonly known as Mare Island Naval Shipyard, in the City of Vallejo, County of Solano, State of California, described as follows:

Being a portion of the "Primary Eastern Early Transfer Parcel", described as "Parcel No. 1" in the Grant Deed to Lennar Mare Island, LLC, a California limited liability company, which was recorded on March 26, 2002, Series No. 2002-37966, Solano County Official Records, more particularly described as follows:

Commencing at a 2-1/2" aluminum disk monument in concrete, stamped "Mare Island Control Point 25, McGill-Martin-Self Inc. Orinda CA", as shown on that certain Record of Survey filed November 14, 1996, in Book 21 of Surveys at Page 94 of Official Records of Solano County. Having established grid coordinates of North 1,793,023.717 U.S Survey feet and East 6,484,011.280 U.S Survey feet, referenced to the California Coordinate System of 1983, Zone 2 as given in that particular report entitled, "Summary Report, Horizontal Control Network, Mare Island Naval Shipyard, Vallejo, California, MMS Job #1587, McGill Martin Self, Inc.";

thence, South 76°34'25" East, 947.16 feet to the south westerly corner of Building No. 944, the POINT of BEGINNING;

the following sixteen (16) courses are coincident with the base footprint of said building 944:

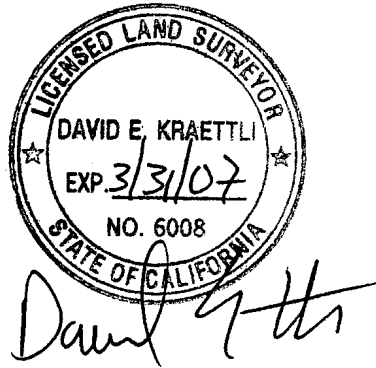
1. thence, South 82°33'27" East, 119.49 feet
2. thence, North 07°26'33" East, 97.54 feet
3. thence, North 82°33'27" West, 47.67 feet
4. thence, North 07°26'33" East, 19.09 feet
5. thence, North 82°33'27" West, 29.49 feet
6. thence, North 07°26'33" East, 17.35 feet
7. thence, South 82°33'27" East, 2.64 feet
8. thence, North 07°26'33" East, 17.68 feet
9. thence, North 82°33'27" West, 24.97 feet
10. thence, South 07°26'33" West, 35.23 feet
11. thence, North 82°33'27" West, 19.92 feet
12. thence, South 07°26'33" West, 34.42 feet
13. thence, North 82°33'27" West, 5.94 feet
14. thence, South 07°26'33" West, 55.05 feet
15. thence, South 82°33'27" East, 5.85 feet
16. thence, South 07°26'33" West, 26.96 feet to the POINT of BEGINNING.

Containing an area of 0.33 acre or 14,171 square feet, more or less.

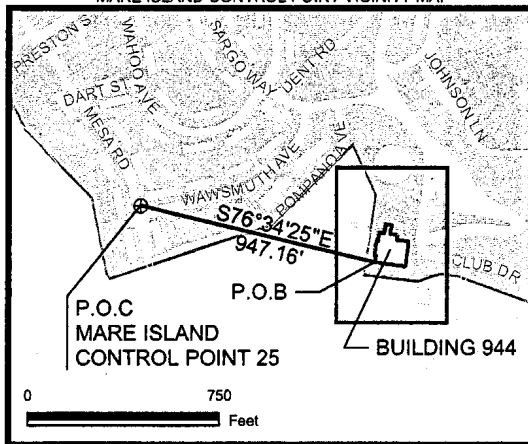
The Basis of Bearing for the above description is the California Coordinate System (1983), Zone 2. Distances shown are grid distances. To obtain ground distances multiply grid distances by 1.00006210.

The real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

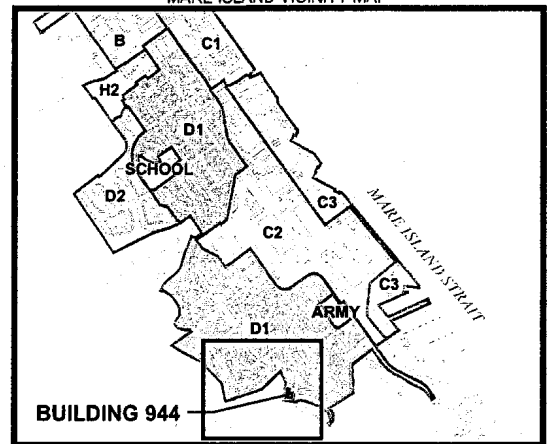
Date: December 20, 2005



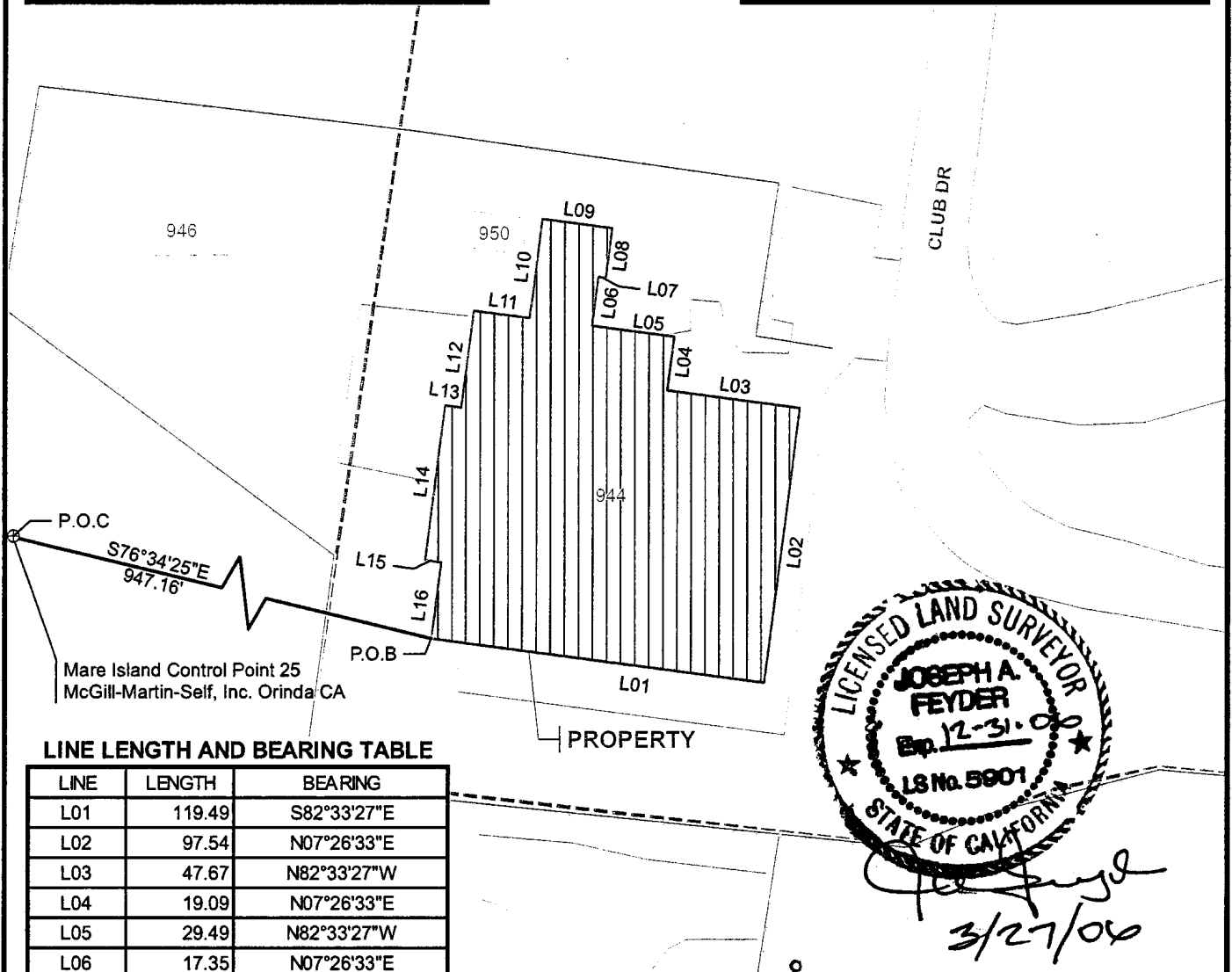
MARE ISLAND CONTROL POINT VICINITY MAP



MARE ISLAND VICINITY MAP



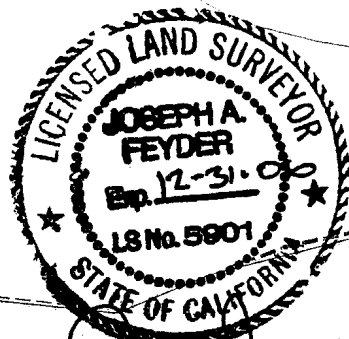
774



Mare Island Control Point 25
McGill-Martin-Self, Inc. Orinda CA

LINE LENGTH AND BEARING TABLE

LINE	LENGTH	BEARING
L01	119.49	S82°33'27"E
L02	97.54	N07°26'33"E
L03	47.67	N82°33'27"W
L04	19.09	N07°26'33"E
L05	29.49	N82°33'27"W
L06	17.35	N07°26'33"E
L07	2.64	S82°33'27"E
L08	17.68	N07°26'33"E
L09	24.97	N82°33'27"W
L10	35.23	S07°26'33"W
L11	19.92	N82°33'27"W
L12	34.42	S07°26'33"W
L13	5.94	N82°33'27"W
L14	55.05	S07°26'33"W
L15	5.85	S82°33'27"E
L16	26.96	S07°26'33"W



LEGEND

- ⊕ LMI CONTROL POINT
- FENCES
- ▨ PROPERTY
- ROADS
- STRUCTURES

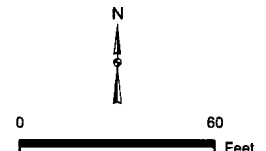


EXHIBIT C
PROPERTY ENVIRONMENTAL
RESTRICTION AREA
LENNAR MARE ISLAND, VALLEJO, CALIFORNIA

